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19 *Counsel for Plaintiffs and the putative class*
[Additional Counsel on Signature Page]

20
21 **UNITED STATES DISTRICT COURT**
22 **NORTHERN DISTRICT OF CALIFORNIA**
23
24 **SAN FRANCISCO DIVISION**

25
26 *IN RE PACIFIC FERTILITY CENTER*
27 *LITIGATION*

28 Case No. 3:18-cv-01586-JSC

JOINT STIPULATION AND [PROPOSED]
ORDER FOR APPOINTMENT OF
COUNSEL

1 WHEREAS, this litigation arises from a March 4, 2018 incident in which liquid nitrogen levels
2 in one of Defendants' tanks are alleged to have declined, resulting in alleged damage to: (1) human
3 tissue including eggs and embryos; and (2) those whose cryogenically stored eggs and embryos were
4 involved in the incident;

5 WHEREAS, on April 30, 2018, the Court entered an Order consolidating three related proposed
6 class actions currently pending in the Northern District of California, and setting a schedule for: (1)
7 plaintiffs to file a consolidated complaint; (2) Defendants to answer, move, or otherwise respond to the
8 consolidated complaint; and (3) briefing any motions to dismiss filed by Defendants (ECF 17);

9 WHEREAS, pursuant to the Court's Order, Plaintiffs must file their consolidated complaint on
10 or before May 30, 2018 (ECF 17);

11 WHEREAS, the parties wish to streamline early case management, narrow the issues in dispute,
12 and avoid uncertainty or confusion regarding Plaintiffs' counsel's authorization to act on behalf of the
13 proposed class;

14 WHEREAS, counsel for Plaintiffs have met and conferred and have agreed to work together on
15 behalf of Plaintiffs and the proposed class;

16 WHEREAS, Fed. R. Civ. P. 23(g)(3) states that the "court may designate interim counsel to act
17 on behalf of a putative class before determining whether to certify the action as a class action";

18 WHEREAS, Plaintiffs in the consolidated action agree that the appointment of their counsel,
19 Girard Gibbs LLP; Peiffer Wolf Carr & Kane, A Professional Law Corporation; and Lieff Cabraser
20 Heimann & Bernstein, LLP, as interim class counsel, consisting of a three-member executive
21 committee, with one member of the committee serving as liaison counsel will be beneficial to the
22 effective prosecution of Plaintiffs' claims because it will formally empower them to act on behalf of the
23 proposed class;

24 WHEREAS, as reflected in the declarations and firm resumes submitted herewith, proposed
25 interim counsel are well-qualified to represent the interests of the proposed class, *see* Declarations of
26 Daniel C. Girard, Adam B. Wolf and Sarah R. London;

27 WHEREAS, as reflected in the declarations submitted herewith, proposed interim class counsel
28 have undertaken significant effort on behalf of proposed class members, including through a factual and

1 technical investigation into the March 4, 2018 incident; consultation with experts; meetings with
2 numerous families whose eggs and/or embryos were stored in the tank at issue; review of client
3 documents; and coordination with defense counsel regarding consolidation of the three related actions
4 and setting a schedule;

5 WHEREAS, in order to avoid duplication of effort and ensure the efficient prosecution of
6 Plaintiffs' claims, Plaintiffs will submit a proposed protocol for work and expenses in advance of the
7 initial case management conference addressing, among other issues, the exercise of billing judgment;
8 the maintenance of contemporaneous, detailed time records; the periodic reporting of fees, expenses,
9 and/or costs; and staffing;

10 WHEREAS, Defendants take no position on designation of the proposed interim class counsel to
11 act on behalf of the proposed class; and

12 WHEREAS, the parties through their attorneys agree that by entering into this stipulation
13 Defendants are not waiving any right they may have to challenge and/or object to class certification,
14 federal jurisdiction and/or any objection or challenge to the class action to which they would be entitled
15 by law, nor are Defendants waiving any objections or defenses they may have as to any issues, either
16 procedural or substantive, arising out of the consolidated action.

17 NOW THEREFORE, the parties through their respective counsel and subject to the Court's
18 approval hereby stipulate and agree that:

19 1. Pursuant to Fed. R. Civ. P. 23(g)(3), the Court appoints Girard Gibbs LLP; Peiffer Wolf
20 Carr & Kane, A Professional Law Corporation; and Lieff Cabraser Heimann & Bernstein, LLP as
21 interim class counsel and designates: (1) Girard Gibbs LLP; Peiffer Wolf Carr & Kane, A Professional
22 Law Corporation; and Lieff Cabraser Heimann & Bernstein, LLP as Plaintiffs' executive committee;
23 and (2) Girard Gibbs LLP as Plaintiffs' liaison counsel.

24 2. Pursuant to this structure, and consistent with the Manual for Complex Litigation, Fourth,
25 §§ 10.221 and 40.22, Plaintiff's executive committee and liaison counsel shall have the authority to
26 perform or delegate the following tasks on behalf of all Plaintiffs in the consolidated action:

Plaintiffs' Executive Committee

- directing, coordinating, and supervising the prosecution of Plaintiffs' claims in the consolidated action;
- initiating, responding to, scheduling, briefing, and arguing all motions;
- appearing at all hearings and conferences regarding the case;
- determining the scope, order, and conduct of all discovery proceedings;
- assigning work to Plaintiffs' counsel in the consolidated action, as necessary and appropriate;
- retaining experts;
- conducting settlement negotiations on behalf of named Plaintiffs and the class;
- entering into stipulations with opposing counsel as necessary for the conduct of the litigation;
- preparing and distributing status reports to any other law firms that might seek to represent the proposed class;
- collecting and reviewing time and expense records from all Plaintiffs' counsel on a monthly basis, or as provided for under any Court-approved protocol;
- coordinating activities to avoid duplication and inefficiency in the filing, serving, and/or implementation of pleadings, other court papers, discovery papers, and discovery practice, and generally in the litigation;
- coordinating discovery and briefing of common legal issues between the state court and the federal actions; and
- performing such other duties that may be incidental to proper coordination of Plaintiffs' pretrial activities or authorized by further order of the Court.

Plaintiffs' Liaison Counsel

- receiving and distributing to Plaintiffs' counsel, as appropriate, Orders, notices, and correspondence from the Court, to the extent such documents are not electronically filed;

- 1 • receiving and distributing to Plaintiffs' counsel, as appropriate, discovery pleadings and
2 correspondence and other documents from Defendants' counsel that are not
3 electronically filed;
- 4 • convening meetings of counsel, and otherwise assisting in the coordination of case
5 management activities;
- 6 • communicating with defense counsel, on behalf of Plaintiffs' executive committee,
7 concerning scheduling and other administrative matters; and
- 8 • communicating with the Court, on behalf of Plaintiffs' executive committee, concerning
9 scheduling and other administrative matters.

10 **IT IS SO STIPULATED.**

11
12 Dated: May 10, 2018

Respectfully submitted,

13 By: /s/ Adam E. Polk

14 Daniel C. Girard (State Bar No. 114826)

15 Adam E. Polk (State Bar No. 273000)

16 Steven M. Tindall (State Bar No. 187862)

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27 Joseph G. Sauder (*pro hac vice* forthcoming)

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Counsel for Plaintiff R.E.

1 Dated: May 10, 2018

By: /s/ Adam B. Wolf

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8 *Counsel for Plaintiffs Megan and Jonathan Bauer*

9 Dated: May 10, 2018

By: /s/ Sarah R. London

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19 *Counsel for Plaintiffs A.B., C.D., and E.F.*

20 Dated: May 10, 2018

By: /s/ Joseph S. Picchi

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27 *Counsel for Defendant Pacific Fertility Center*

1 Dated: May 10, 2018

By: /s/ Erin M. Bosman

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8 *Counsel for Defendant Prelude Fertility, Inc.*

9 **ATTESTATION**

10 I, Adam E. Polk, am the ECF User whose identification and password are being used to file this
11 Joint stipulation and pursuant to Civil L.R. 5-1(i)(3) I attest under penalty of perjury that concurrence in
this filing has been by all counsel.

12 Dated: May 10, 2018

13 /s/ Adam E. Polk

14 Adam E. Polk

15 **[PROPOSED] ORDER**

16 PURSUANT TO STIPULATION, IT IS SO ORDERED.

17 Dated: May 15, 2018

18 
19 HONORABLE JACQUELINE SCOTT CORLEY
20 UNITED STATES MAGISTRATE JUDGE